IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.807 of 2006

Date of decision 22.6.2007

Smt.Shakuntala Devi Petitioner

Vs.

Karan Singh and others Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Anup Rattan, Advocate.

For the Respondents : Mr.G.D.Verma, Senior, Advocate, with Mr.Romesh Verma, Advocate, for respondent-1.

Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Mrs. Meenakshi Sharma, Dy.A.Gs, for respondent No.2.

Rajiv Sharma, J.

Through the medium of this petition order dated 20.6.2006 passed in Revision Petition No.27 of 2004 by the Financial Commissioner (Appeals), Himachal Pradesh has been assailed.

The brief facts necessary for the adjudication of this petition are that the petitioner had filed an application on 18.4.1996 before the Assistant Collector Ist Grade, Dehra for partition of land comprised in Khata No.80, Khatauni No.132, Khasra Nos. 1161, 1212, 1213, 1214, 1218, 1219, 1264, 1339 and 1340, measuring 1-08-27 hectares situated in Vakya Mohal Kariara Nichla, Tehsil Dehra District Kangra. The said land was jointly held by the parties. The Assistant Collector Ist Grade, Dehra issued notice to the respondent after completing all the formalities and

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

recording the statements of the parties prepared and sanctioned mode of partition on 4.1.1999. The copy of the same was sent to the Field Kanungo for partition on the spot. The Assistant Collector Ist Grade sanctioned final partition on 23.3.2002.

Feeling aggrieved by the order dated 23.3.2002 the petitioner filed an appeal under Section 14 of the H.P. Land Revenue Act in the court of Collector, Dehra District Kangra on 11.11.2002. The petitioner had taken a specific ground in her appeal that the lower court had accepted the partition against the sanctioned mode of partition. The appeal was rejected by the Collector, Dehra on 11.11.2002. Feeling aggrieved by the order dated 11.11.2002 petition under Section 17 of the H.P. Land Revenue Act 1954 was preferred by the petitioner before the Deputy Commissioner, Kangra exercising the powers of Commissioner (Appeals) Kangra at Dharamshala. It appears that the revision was transferred by the Additional Deputy Commissioner, Kangra to the Divisional Commissioner, Kangra Division at Dharamshala. The Divisional Commissioner had recommended to the Financial Commissioner (Appeals) after recording his finding to pass appropriate orders.

The Financial Commissioner had rejected the Revision Petition No.27 of 2004 based on the recommendation made by the Commissioner dated 18.3.2004 but accepted the Revision Petition No.30 of 2004 filed against the recommendations made by the Commissioner on 18.3.2004. Mr. Anup Rattan had strenuously argued that vide order dated 4.1.1999 mode of partition was sanctioned and the partition was to be carried out according to the same. He has also supported the order passed by the learned Divisional Commissioner dated 18.3.2004. Mr.G.D.Verma, learned senior counsel appearing for respondent No.2 had supported the order dated 20.6.2004.

I have heard learned counsel for the parties and have also gone through the record of the case carefully.

It is evident from order dated 4.1.1999 that the partition was to be carried out in the manner prescribed therein. The order dated 23.3.2002 was not in conformity with order dated 4.1.1999. A specific ground had been taken before the Collector that vide order dated 23.3.2002 the partition was effected against the sanctioned mode of partition. The appellate authorities had over looked the order dated 4.1.1999 on the basis of which the partition was to be effected. The learned Divisional Commissioner had come to the just conclusion that while sanctioning the final partition, the learned Assistant Collector Ist Grade had prepared three khatas and also created a new path for the respondent through Khasra No.1214/3 in violation of sanctioned mode of partition as well as against the report of the Local Commissioner was not agreed to. It was incumbent upon the Assistant Collector Ist Grade to seek necessary approval of the competent authority to review the mode of partition. The Financial Commissioner (Appeals) was required to look into the recommendations made by the Divisional Commissioner. The mode of partition sanctioned vide order dated 4.1.1999 could not be deviated by the Assistant Collector Ist Grade without seeking the approval for its review. The finding recorded by the Financial Commissioner (Appeals) that the plea of the petitioner was mere technicality is not based on any reasoning. The learned Financial Commissioner (Appeals) was required go into the entire gamut of the matter instead of abruptly coming to the conclusion that litigation should come to an end.

Accordingly this writ petition is allowed. The order dated 20.6.2006 is quashed and set aside. The order passed by the Divisional

Commissioner recommending the case to the Financial Commissioner (Appeals) dated 18.3.2004 is upheld. It is further directed that the partition be carried out on the basis of the instrument of partition drawn on 4.1.1999 within a period of six weeks from today. There shall however, no order as to costs.

June 22,2007(g) **(Rajiv Sharma) ,J.**